

MLN Matters Number: SE0806 **Revised**

Related Change Request (CR) #: N/A

Related CR Release Date: N/A

Effective Date: N/A

Related CR Transmittal #: N/A

Implementation Date: N/A

**Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: Grandfathering, Repair and Replacement, Mail Order Diabetic Supplies and Advance Beneficiary Notices (ABNs) – The second in a series of articles on the new DMEPOS competitive bidding program.**

**Note:** This article is impacted by the Medicare Improvements for Patients and Providers Act of 2008, which was enacted on July 15, 2008. That legislation delays the implementation of the DMEPOS competitive bidding program until 2009 and makes other changes to the program. This article will be further revised and/or replaced as more details of the modified program are available.

## Provider Types Affected

Any Medicare Fee-for-Service (FFS) provider supplying DMEPOS to a Medicare beneficiary. This article also contains information of interest to those who order DMEPOS and to referral agents as defined in MLN Matters article SE0805.

## Provider Action Needed

The first article (SE0805) in this series on the DMEPOS Competitive Bidding Program being instituted by the Centers for Medicare & Medicaid Services (CMS) presented an overview of how the program may affect your patients. There are also some key provisions of the program about which your patients may raise questions. While the competitive bidding program only affects ten areas of the country as of July 1, 2008, it will expand to 70 additional geographic areas in 2009. Thus, it is important for you to be familiar with this program.

## Background

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MLN Matters article SE0805, entitled "Overview of New Medicare Competitive Bidding Program for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)," which is available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0805.pdf> on the CMS website, summarizes information on competitive bidding that may impact your patients. Article SE0805 contains the list of competitive bidding areas for the first phase of competitive bidding as well as a list of the DMEPOS product categories that are included in the program's initial implementation.

In using this series of DMEPOS articles, it is important to remember that in most instances, beneficiaries maintaining a permanent residence in one of the Competitive Bidding Areas (CBAs) must obtain competitive bidding items from a contract supplier. There are also program requirements that apply to beneficiaries who reside in CBAs but travel outside of those CBAs and to beneficiaries who do not live in CBAs but travel to them.

### *Grandfathered Suppliers*

**Note:** See Section 20.6.1.1 of the new Chapter 36 of the Medicare Claims Processing Manual for official CMS instructions regarding grandfathered suppliers. That section is attached to CR5978 at <http://www.cms.hhs.gov/Transmittals/downloads/R1502CP.pdf> and is amended by CR6119 at <http://www.cms.hhs.gov/Transmittals/downloads/R1532CP.pdf> on the CMS website.

The Medicare DMEPOS Competitive Bidding Program requires Medicare beneficiaries to obtain competitive bidding items from a contract supplier, unless an exception applies. Therefore, in some instances, your patient may be required to change from a non-contract supplier to a contract supplier. However, the program does allow for certain suppliers to be "grandfathered." Grandfathered suppliers are allowed to continue to provide certain rented DME items and services even though they are not contract suppliers.

Grandfathering only applies when the patient is renting DME or oxygen equipment at the time the competitive bidding program becomes effective and the rental period for the item began before the start of the competitive bidding program.

Beneficiaries who are receiving oxygen, oxygen equipment or rented DME at the time the competitive bidding program becomes effective may elect to continue to receive these items from a non-contract supplier, if the supplier is willing to continue furnishing these items. If a non-contract supplier chooses not to be "grandfathered" or if a beneficiary wants to change to a contract supplier, the non-contract supplier must pick up the rental equipment and oxygen equipment. Unless a beneficiary relocates outside of the CBA and the supplier service area, the supplier cannot discontinue services by picking up a medically necessary item

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prior to the end of a rental month for which the supplier was eligible to receive a rental payment, even if the last day of a rental month is after the start date of the program. If the date of the beginning of a monthly rental period is prior to the start of the competitive bidding program, the supplier must submit a claim for that month. Note that the grandfathering provision also applies to Medicare beneficiaries who transition from a Medicare Advantage Plan to the Fee-for-Service program.

If the beneficiary stays with a “grandfathered” supplier, he or she may elect to change to a contract supplier at any time, and the contract supplier would be required to accept the beneficiary as a customer. For more details on the grandfathering provision, visit <http://www.dmecompetitivebid.com> on the CMS website.

### ***Repair and Replacement of Beneficiary-Owned Items***

**Note:** See section 40.8 of the new Chapter 36 regarding repair and replacement of beneficiary-owned equipment. That section is attached to CR6119 at <http://www.cms.hhs.gov/Transmittals/downloads/R1532CP.pdf> on the CMS website.

#### **Repair ONLY**

A beneficiary who owns a competitively bid item that needs to be repaired may have the repairs performed by either a contract supplier or by a non-contract supplier. In these cases, Medicare pays for reasonable and necessary labor not otherwise covered under a manufacturer’s or supplier’s warranty.

#### **Repair and Replacement**

If a part needs to be replaced in order to make the beneficiary-owned equipment serviceable, and the replacement part is also a competitively bid item for the CBA in which the beneficiary maintains a permanent residence, the part may be obtained from either a contract supplier or a non-contract supplier. In either case, Medicare pays the single payment amount provided under the Competitive Bidding Program for the replacement part.

#### **Replacement ONLY**

Beneficiaries maintaining permanent residences in a CBA are required to obtain replacement of all items subject to competitive bidding from a contract supplier. This includes replacement of base equipment and replacement of parts or accessories for base equipment that are being replaced for reasons other than servicing of the base equipment.

Beneficiaries who are not permanent residents of a CBA but require a replacement of a competitively bid item while visiting a CBA, must obtain the replacement item

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from a contract supplier. The supplier will be paid the fee schedule amount for the state where the beneficiary is a permanent resident.

### *Mail Order Diabetic Supplies under the Program*

**Note:** See section 20.5.4.1 of the new Chapter 36 for the official CMS instructions regarding mail order diabetic supplies. That section is attached to CR6119 at <http://www.cms.hhs.gov/Transmittals/downloads/R1532CP.pdf> on the CMS site.

Medicare beneficiaries who permanently reside in a CBA may purchase their diabetic testing supplies from:

- A mail order contract supplier for the area in which the beneficiary maintains a permanent residence; or
- A non-contract supplier in cases where the supplies are not furnished on a mail order basis.

The mail order contract period covers diabetic testing supplies furnished from **July 1, 2008 through March 31, 2010**. The term "mail order" refers to items ordered remotely (i.e., by phone, email, internet, or mail) and delivered to the beneficiary's residence by common carriers (e.g., U.S. Postal Service, Federal Express, United Parcel Service) and does not include items obtained by beneficiaries from local supplier storefronts.

Mail order contract suppliers will be reimbursed at the single payment amount for the CBA where the beneficiary maintains a permanent residence.

For diabetic supplies that are not furnished through mail order, suppliers will be paid the fee schedule amount.

Medicare payment will not be made to non-contract suppliers that furnish mail order diabetic testing supplies to Medicare beneficiaries residing in a CBA. A special modifier, KL, will be used on each claim to indicate that the item was furnished on a mail order basis.

**Note: Suppliers that furnish diabetic testing supplies on a mail order basis and do not attach the mail order modifier could be subject to significant penalties under the False Claims Act.**

Both the Medicare program and beneficiaries will save money each time a mail order contract supplier is used; **however, it is solely up to the beneficiaries to decide whether or not they wish to obtain their diabetic testing supplies on a mail order basis.**

All mail order contract suppliers are required to report the manufacturer or make and model number of products they furnish and must update this list on a quarterly

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basis. This information will be made available to the public once the contract suppliers have been announced and will be updated on a routine basis. Contract suppliers will be required to make available the same range of products to Medicare beneficiaries that they make available to non-Medicare customers.

### *Advance Beneficiary Notice (ABN) Information*

Note: See section 20.7 of the new Chapter 36 for the official instructions related to the use of ABNs under the competitive bidding program. That section is attached to CR5978 at <http://www.cms.hhs.gov/Transmittals/downloads/R1502CP.pdf> on the CMS site.

In general, if a non-contract supplier in a CBA furnishes a competitively bid item to any Medicare beneficiary regardless of whether that beneficiary maintains a permanent residence in the CBA or another area, and no applicable exceptions apply, Medicare will not make payment. In addition, the beneficiary is not liable for payment unless the non-contract supplier in a CBA obtains an ABN signed by the beneficiary.

A signed ABN indicates that the beneficiary was informed in writing prior to receiving the item that there would be no Medicare coverage due to the supplier's contract status, and that the beneficiary understands that he/she will be liable for all costs that the non-contract supplier may charge the beneficiary for the item.

If a non-contract supplier furnishes a competitively bid item to a beneficiary and the beneficiary signs an ABN, the supplier must use the "GA" modifier on their claim. If the "GA" modifier is not present on the claim, the supplier may not hold the beneficiary liable for the cost of the item.

### **Additional Information**

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CMS contracted with the Competitive Bidding Implementation Contractor (CBIC) to administer the DMEPOS Competitive Bidding Program. Downloadable **Patient Education Fact Sheets** can be found at:

<http://www.dmecompetitivebid.com/palmetto/CBIC.nsf/docsCat/CBIC~Referral%20Providers~Patient%20Education%20Fact%20Sheets?open&cat=CBIC~Referral%20Providers~Patient%20Education%20Fact%20Sheets> .

If you have concerns, questions, or complaints about the quality of an item or the service that a patient received from a contract supplier, please call the Competitive Bidding Program helpline at 1-877-577-5331.

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CMS has released a new Chapter 36 of the Medicare Claims Processing Manual. This chapter was initially issued with CR5978 was amended by CR6119. The MLN Matters articles related to CR5978 and CR6119 are available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5978.pdf> and <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6119.pdf> on the CMS website.

For more information about the Competitive Bidding Program, call 1-877-577-5331. TTY users call 1-877-486-2048. Stay tuned for additional articles in this series. You can also visit <http://www.cms.hhs.gov/DMEPOSCompetitiveBid/> on the CMS website.

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